



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Granger Associates

File: B-222855

Date: August 11, 1986

DIGEST

1. Except as warranty in preprinted terms and conditions of sale may have limited the protester's obligation to perform, inclusion of the preprinted form does not render its bid nonresponsive, provided the protester indicates elsewhere in the bid that the form is submitted for the limited purpose of demonstrating the terms of the protester's standard commercial warranty.
2. Bid is nonresponsive where the protester omits a portion of the bid package and instead submits a typewritten "Introduction" clarifying its understanding of related material obligations and modifying some of them.

DECISION

Granger Associates protests the rejection of its bid under invitation for bids (IFB) No. DACW66-86-B-0026, issued by the Memphis District, Corps of Engineers, for microwave radio equipment. The Corps rejected Granger's bid because it concluded that Granger submitted unsolicited materials with its bid that qualified the bid, making it nonresponsive. We deny the protest.

Granger submitted with its bid a typewritten "Introduction" explaining the bid and preprinted "Terms and Conditions of Sale." The introduction consisted of several paragraphs stating Granger's understanding of the obligations it was assuming. The preprinted form included a statement that "all contracts entered into by Granger Associates are subject to and governed by these conditions which may be varied only by Granger in writing." Further, the preprinted form defined certain terms, including "price," "taxes," "cancellation," and "warranty," and provided: (1) that Granger's prices do not include sales, use, excise, and other taxes; (2) that Granger would not be responsible for the safe arrival of shipments; (3) that no order may be canceled without Granger's written agreement; and (4) that Granger reserved the right to modify equipment sold that is of its design. The form also stated that any contract awarded to Granger would be interpreted in accordance with the law of the state of California.

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The IFB required that the contract price include all taxes, that the risk of loss or damage was to remain with the contractor until the equipment was delivered, that the government would retain the right to terminate the contract for its convenience, and that the equipment was to conform to the government's specifications. Disputes arising under any contract were to be resolved under the contractual disputes procedure, in accord with federal procurement law. On its face, Granger's preprinted form was inconsistent with these provisions. Finding that Granger's preprinted form made its bid nonresponsive, the contracting officer rejected it.

According to the protester, however, the contracting officer rejected the bid improperly because the bid indicates that the preprinted form was not to be controlling. Granger asserts that it furnished the preprinted form in response to a solicitation requirement that bidders offer their best commercial warranty. The form contains Granger's warranty. The protester says it limited the effect of its submission in its explanatory introduction, which stated:

"All equipment quoted carries Granger Associates full warranty as stated in our Terms and Conditions of Sale. (Attached for Reference) The Terms and Conditions of Sale . . . are effective as stated except where modified by this bid, or other agreements between the Federal Government and Granger Associates."

Granger says it meant to accept all of the solicitation requirements.

Although a bidder's preprinted terms and conditions of sale normally are construed as part of its bid, our Office has recognized that the inclusion of such forms will not affect responsiveness where a firm expressly indicates in its bid that the preprinted terms are not intended to apply. Giant Lift Equipment Co., B-213558, May 22, 1984, 84-1 CPD ¶ 542. A bid is responsive if the bidder upon award would be obligated to perform in exact conformance with all material solicitation provisions. If it is clear from the bid that a preprinted form was submitted for some special reason and that it was not the bidder's intention to qualify its obligations, the preprinted form has no effect.

While we believe Granger did not intend that the preprinted form govern except with respect to the warranty provision, we nevertheless think Granger's bid was properly rejected as nonresponsive. As noted in the agency report, Granger also did not return solicitation page C-1 with its bid. That page includes: (1) IFB section C, which contains a brief product description and the warranty provisions; (2) section E, setting out inspection and acceptance terms; and (3) section F, containing delivery terms.

Generally, such terms are material requirements. Moreover, a bidder that fails to return a complete solicitation package may be considered for award only if the bid was submitted in a form that shows that the bidder is nevertheless offering to be bound to perform in accordance with all of the material terms and conditions of the solicitation. Armada, Inc., B-189409, Feb. 27, 1978, 78-1 CPD ¶ 157.

In Granger's bid "Introduction," the protester included a number of references to requirements that were contained on IFB page C-1. These include delivery, inspection, and payment terms, in addition to the commercial warranty provision. Examination of the "Introduction" discloses that there are subtle differences between Granger's understanding of the government's requirements and the literal language of page C-1. The IFB states, for example, that "the equipment shall be delivered and made ready for use within 120 calendar days; Granger stated that the equipment would be delivered within 120 days and explained that some of the equipment it was offering would have to be installed by the government, a process which Granger indicated, "will not be complicated and will take very little time."

Moreover, while Granger referred in the introduction to page C-1 requirements concerning inspection of goods, notice of pending shipment, and commercial warranties (as discussed earlier), it omitted portions of each of them. These include requirements that the contractor promptly replace rejected goods, that the bill of lading and packaging list be forwarded to a specific address on the date of shipment and, with respect to the warranty, the offeror's agreement that the government's rights under the warranty would be in addition to its rights under other provisions of the contract.

In the circumstances, we think it is clear that Granger intended through its "introduction" to clarify its bid. We cannot say that Granger was offering to be bound by the page C-1 provisions, except to the extent stated in its introduction, or indeed, that Granger did not intentionally omit page C-1 because it was unwilling to be bound by its terms. We conclude, therefore, that the bid was nonresponsive and was properly rejected.

The protest is denied.

for *Raymond E. Evans*
Harry R. Van Cleve
General Counsel